

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CARLOS DIAZ,  
Plaintiff,  
v.

CHEVRON CORPORATION, et al.,  
Defendants.

Case No. 25-cv-03327-EMC

**SECOND ORDER RE REMOVAL**

Docket No. 17

Previously, the Court issued an order asking the removing defendant, Contra Costa Electric, Inc. (“CCE”) to address questions related to its removal of this case from state to federal court. *See* Docket No. 16 (order). The Court essentially asked CCE to address two issues, one related to whether the other defendants in the case had consented to removal, and the other related to the timeliness of CCE’s removal. CCE has now filed its response brief.

Having reviewed that brief, the Court still has some concerns, in particular, regarding the timeliness of removal. To be sure, CCE did not have a *duty* to investigate as to whether there was a basis for removability. *See Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005) (stating that “notice of removability under § 1446(b) is determined through examination of the four corners of the applicable pleadings, not through subjective knowledge or a duty to make further inquiry”). Also, the Ninth Circuit has held that, “a defendant who has not lost the right to remove because of a failure to timely file a notice of removal under § 1446(b)(1) or (b)(3)<sup>1</sup> may

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<sup>1</sup> Section 1446(b)(1) provides: “The notice of removal . . . shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” 28 U.S.C. § 1446(b)(1). Section 1446(b)(3) provides:

remove to federal court when it [*does*] discover[], based on its own investigation, that a case is removable.” *Roth v. CHA Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1123 (9th Cir. 2013) (emphasis added); *see also Lainez v. Wilhelm, LLC*, No. 4:23-cv-04421-KAW, 2024 U.S. Dist. LEXIS 173859, at \*9 (N.D. Cal. Sept. 25, 2024) (noting that, under *Roth*, a “[d]efendant is permitted to file a notice of removal outside of the two enumerated, 30-day periods based on its own information”). But *Roth* did not hold that a defendant has no time constraints in removing when it does discover that a case is removable. *Compare id.* at \*4 (where defendant removed on the basis that there was preemption under the Labor Management Relations Act, noting that defendant removed to federal court within thirty days of discovering that plaintiff was a unionized member of a certain local union); *see also Roth*, 720 F.3d at 1125 (recognizing a concern that a defendant might “seek removal only when it becomes strategically advantageous for it to do so”). And in its brief, CCE does not address when it discovered that Plaintiff was a union member, thereby giving rise to its claim that removal was proper based on LMRA preemption.

Notwithstanding the Court’s concern on timeliness, it recognizes that “[a] district court may only remand a case to state court for procedural defects ‘upon a timely motion to remand.’” *Friedenberg v. Lane Cnty.*, 68 F.4th 1113, 1121 (9th Cir. 2023) (noting that, under 28 U.S.C. § 1447(c), a motion to remand on the basis of any defect other than lack of subject matter jurisdiction, must be made within 30 days after the filing of the notice of removal and that, “[i]f a plaintiff objects to removal for a defendant’s failure to meet the removal deadline, he must do so in a timely motion to remand”; “the [thirty-day] statutory time limit for removal petitions is merely a formal and modal requirement and is not jurisdictional”). Here, Plaintiff did not move to remand on the basis that removal was untimely. *See Moore’s Fed. Prac. – Civ.* § 107.151 (“Most courts now correctly hold that a district court may not remand a removed case on its own motion

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[I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

*Id.* § 1446(b)(3).


1 based on defects in the removal procedure. These courts emphasize that the statute specifically  
2 assigns to the court concern for subject matter jurisdiction issues, which may not be waived, and  
3 to the parties (by virtue of the inclusion of the word ‘motion’) care for procedural formalities,  
4 which are waivable and do not affect jurisdiction. Thus, a district court has no inherent authority  
5 to remand sua sponte for procedural defects, even within the 30-day period after the filing of the  
6 notice of removal; only parties may seek remand based on defects in the removal procedure.”).  
7 Nor did Plaintiff move to remand on the basis that CCE waived its right to remove by taking  
8 action in state court manifesting an intent to have the matter adjudicated there and to abandon the  
9 right to a federal forum. *See Kenny v. Wal-Mart Stores, Inc.*, 881 F.3d 786, 790 (9th Cir. 2018)  
10 (indicating that waiver of the right to remove does not implicate a court’s original jurisdiction and  
11 thus district court exceeded its statutory authority in remanding *sua sponte* on nonjurisdictional  
12 ground).<sup>2</sup>

13 Accordingly, at this juncture, there is no basis for a remand.

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15 **IT IS SO ORDERED.**

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17 Dated: June 10, 2025

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EDWARD M. CHEN  
United States District Judge

<sup>2</sup> *See also Christ v. Blackwell*, No. 2:10-cv-0760 EFB P, 2013 U.S. Dist. LEXIS 68595, at \*2 (E.D. Cal. May 14, 2013) (stating that “failure to comply with the rule [requiring consent of all defendants] is a procedural, non-jurisdictional defect that must be addressed by a motion to remand made within 30 days after the filing of the notice of removal”); *accord* Moore’s Fed. Prac. – Civ. § 107.42[5] (stating that “[t]he failure of all defendants to join in the removal notice constitutes a procedural defect[;] [i]f there is no objection to the defect within 30 days after the removal notice is filed, most courts properly hold that the objection is waived”).